Comment 5

In order to eliminate confusion and uncertainty of the scope, respondent argues that the Department should clarify the language of the scope and explicitly exclude products that are not intended to be part of the investigation. Specifically, respondent argues that the Department exclude unfinished oil country tubular goods and tubing products made in non-pipe sizes. Furthermore, respondent contends that language in the scope concerning ''redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube,'' is confusing. Respondent suggests the Department revise this language to simply state that the scope excludes hollows for cold-drawing. This would eliminate confusion, while not changing the intended scope of the exclusion.

Petitioner asserts that a modification of the scope to Siderca's requests would be unsupported by substantial evidence on the record. With respect to OCTG, petitioner notes that the scope explicitly excludes OCTG when it is not used or intended for use in one of the listed applications and that no further clarification is necessary. Petitioner states that tubing in ''non-pipe'' sizes is expressly covered by the scope of the investigation when produced to one of the listed specifications or when used in a listed application. Petitioner maintains that the language in the scope with respect to redraw hollows was included expressly to ensure that hollows are actually cold-drawn and not sold directly as A–106 pipe.

DOC Position

We agree with petitioner for the reasons outlined in the ''Scope Issues'' section of this notice.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act 19 USC 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of seamless pipe from Argentina, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 27, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below, for entries of seamless pipe from Argentina that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent
Siderca S.A.I.C.	108.13
All Others	108.13

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will makes its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14936 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–826]

Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6320 or 482–3853, respectively.

Final Determination

The Department of Commerce (the Department) determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from Brazil (seamless pipe) is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act'') (1994). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the notice of preliminary determination on January 27, 1995 (60 FR 5351, January 27, 1995), the following events have occurred.

On February 10, 1995, we issued a supplemental questionnaire to respondent Mannesmann S.A. (MSA) and its affiliated Brazilian and U.S. sales organizations, Mannesmann Comercial S.A. (MCSA) and Mannesmann Pipe & Steel Corporation (MPS), respectively (collectively ''Mannesmann''), concerning certain items in its December 9, 1994, response, which we deemed required further clarification and/or information prior to verification. On February 28, and March 9, 1995, Mannesmann submitted its responses to this questionnaire, including revised home market and U.S. sales listings.

In response to respondent's request, we postponed the final determination until June 12, 1995, pursuant to section 735(a)(2)(A) of the Act (60 FR 9012, February 16, 1995).

In our notice of preliminary determination we stated that we would solicit further information on various scope-related issues, including class or kind of merchandise. On February 10, 1995, we issued a questionnaire to interested parties to request further information on whether the scope of the investigation constitutes more than one class or kind of merchandise. Responses to this questionnaire were submitted on March 27, 1995.

In March and April, 1995, we conducted verification of Mannesmann's questionnaire responses. Our verification reports were issued in May, 1995.

On April 27, 1995, Koppel Steel Corporation, a U.S. producer of subject merchandise which appeared as an interested party from the outset of this investigation, requested co-petitioner status, which the Department granted.

Case and rebuttal briefs were submitted on May 19, 1995, and May 25, 1995, respectively. In its rebuttal

brief, petitioner maintained that the Department should not consider certain information in respondent's case brief because it allegedly constituted an ''untimely submission of factual information.'' MSA disagreed with petitioner in a letter submitted on June 5, 1995. However, we determined that MSA's case brief did not contain new factual information. On June 6, 1995, the Department returned MSA's June 5, 1995, letter, because it constituted an unsolicited submission untimely filed after the briefing period.

Because no requests were received from interested parties, we did not hold a public hearing in this proceeding.

Scope of Investigation

The following scope language reflects certain modifications made for purposes of the final determination, where appropriate, as discussed in the ''Scope Issues'' section below.

The scope of this investigation includes seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5l specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

Interested parties in these investigations have raised several issues related to the scope. We considered these issues in our preliminary determination and invited additional comments from the parties. These

issues, which are discussed below, are: (A) whether to continue to include end use as a factor in defining the scope of these investigations; (B) whether the seamless pipe subject to these investigations constitutes more than one class or kind of merchandise; and (C) miscellaneous scope clarification issues and scope exclusion requests.

A. End Use

We stated in our preliminary determination that we agreed with petitioner that pipe products identified as potential substitutes used in the same applications as the four standard, line, and pressure pipe specifications listed in the scope would fall within the class or kind of subject merchandise and, therefore, within the scope of any orders issued in these investigations. However, we acknowledged the difficulties involved with requiring end-use certifications, particularly the burdens placed on the Department, the U.S. Customs Service, and the parties, and stated that we would strive to simplify any procedures in this regard.

For purposes of these final determinations, we have considered carefully additional comments submitted by the parties and have determined that it is appropriate to continue to employ end use to define the scope of these cases with respect to non-listed specifications. We find that the generally accepted definition of standard, line and pressure seamless pipes is based largely on end use, and that end use is implicit in the description of the subject merchandise. Thus, end use must be considered a significant defining characteristic of the subject merchandise. Given our past experience with substitution after the imposition of antidumping orders on steel pipe products,[1] we agree with petitioner that if products produced to a non-listed specification (*e.g.,* seamless pipe produced to A–162, a non-listed specification in the scope) were actually used as standard, line, or pressure pipe, then such product would fall within the same class or kind of merchandise subject to these investigations.

Furthermore, we disagree with respondents' general contention that using end use for the scope of an antidumping case is beyond the purview of the U.S. antidumping law. The Department has interpreted scope language in other cases as including an end-use specification. *See Ipsco Inc.* v. *United States,* 715 F.Supp. 1104 (CIT 1989) (*Ipsco*). In *Ipsco,* the Department had clarified the scope of certain orders, in particular the phrase, ''intended for use in drilling for oil and gas,'' as covering not only API specification OCTG pipe but, '' 'all other pipe with [certain specified] characteristics used in OCTG applications * * *' '' Ipsco at 1105. In reaching this determination, the Department also provided an additional description of the covered merchandise, and initiated an end-use certification procedure.

Regarding implementation of the end use provision of the scope of these investigations, and any orders which may be issued in these investigations, we are well aware of the difficulty and burden associated with such certifications. Therefore, in order to maintain the effectiveness of any order that may be issued in light of actual substitution in the future (which the end-use criterion is meant to achieve), yet administer certification procedures in the least problematic manner, we have developed an approach which simplifies these procedures to the greatest extent possible.

First, we will not require end-use certification until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring.[2] Second, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that substitution is occurring. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to A–162 specification is being used as pressure pipe, we will require end-use certifications for imports of A–162 specification. Third, normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States. For a complete discussion of interested party comments and the Department's analysis on this topic, see June 12, 1995, *End Use Decision Memorandum* from Deputy Assistant Secretary Barbara Stafford (DAS) to Assistant Secretary Susan Esserman (AS).

B. Class or Kind

In the course of these investigations, certain respondents have argued that the scope of the investigations should be divided into two classes or kinds. Siderca S.A.I.C., the Argentine respondent, has argued that the scope should be divided according to size: seamless pipe with an outside diameter of 2 inches or less and pipe with an outside diameter of greater than 2 inches constitute two classes or kinds. Mannesmann S.A., the Brazilian respondent, and Mannesmannrohren-Werke AG, the German respondent, argued that the scope should be divided based upon material composition: carbon and alloy steel seamless pipe constitute two classes or kinds.

In our preliminary determinations, we found insufficient evidence on the record that the merchandise subject to these investigations constitutes more than one class or kind. We also indicated that there were a number of areas where clarification and additional comment were needed. For purposes of the final determination, we considered a significant amount of additional information submitted by the parties on this issue, as well as information from other sources. This information strongly supports a finding of one class or kind of merchandise. As detailed in the June 12, 1995, *Class or Kind Decision Memorandum* from DAS to AS, we analyzed this issue based on the criteria set forth by the Court of International Trade in *Diversified Products v. United States,* 6 CIT 155, 572 F. Supp. 883 (1983). These criteria are as follows: (1) the general physical characteristics of the merchandise; (2) expectations of the ultimate purchaser; (3) the ultimate use of the merchandise; (4) the channels of trade in which the merchandise moves; and (5) the cost of that merchandise.

In the past, the Department has divided a single class or kind in a petition into multiple classes or kinds where analysis of the *Diversified Products* criteria indicates that the subject merchandise constitutes more than one class or kind. *See, for example, Final Determination of Sales at Less than Fair Value; Anti-Friction Bearings (Apart from Tapered Roller Bearings) from Germany,* 54 Fed. Reg. 18992, 18998 (May 3, 1989) *(''AFBs from Germany''*); *Pure and Alloy Magnesium from Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition,* 57 Fed. Reg. 30939 (July 13, 1992).

1. Physical Characteristics

We find little meaningful difference in physical characteristics between seamless pipe above and below two inches. Both are covered by the same technical specifications, which contains

[1] *See Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Welded Non-Alloy Steel Pipes from Brazil, the Republic of Korea, Mexico and Venezuela,* 59 FR 1929, January 13, 1994.

[2] This approach is consistent with petitioner's request.

detailed requirements.[3] While we recognize that carbon and alloy pipe do have some important physical differences (primarily the enhanced heat and pressure tolerances associated with alloy grade steels), it is difficult to say where carbon steel ends and alloy steel begins. As we have discussed in our *Class or Kind Decision Memorandum* of June 12, 1995, carbon steel products themselves contain alloys, and there is a range of percentages of alloy content present in merchandise made of carbon steel. We find that alloy grade steels, and pipes made therefrom, represent the upper end of a single continuum of steel grades and associated attributes.[4]

In those prior determinations where the Department divided a single class or kind, the Department emphasized that differences in physical characteristics also affected the capabilities of the merchandise (either the mechanical capabilities, as in AFBs from Germany, 54 Fed. Reg. at 18999, 19002–03, or the chemical capabilities, as in *Pure and Alloy Magnesium from Canada*, 57 Fed. Reg. at 30939), which in turn established the boundaries of the ultimate use and customer expectations of the products involved.

As the Department said in *AFBs from Germany*,

> [t]he real question is whether the physical differences are so material as to alter the essential nature of the product, and, therefore, rise to the level of class or kind distinctions. We believe that the physical differences between the five classes or kinds of the subject merchandise are fundamental and are more than simply minor variations on a theme.

54 Fed. Reg. at 19002. In the present cases, there is insufficient evidence to conclude that the differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, rise to the level of a class or kind distinction.

Furthermore, with regard to Siderca's allegation that a two-inch breakpoint is widely recognized in the U.S. market for seamless pipe, the Department has found only one technical source of U.S. market data for seamless pipe, the *Preston Pipe Report.* The *Preston Pipe Report,* which routinely collects and publishes U.S. market data for this merchandise, publishes shipment data for the size ranges ½ to 4½ inches: it does not recognize a break point at 2 inches. Accordingly, the Department does not agree with Siderca that ''the U.S. market'' recognizes 2 inches as a physical boundary line for the subject merchandise.

In these present cases, therefore, the Department finds that there is insufficient evidence that any physical differences between pipe over 2 inches in outside diameter and 2 inches or less in outside diameter, or between carbon and alloy steel, rise to the level of class or kind distinctions.

2. Ultimate Use and Purchaser Expectations

We find no evidence that pipe above and below two inches is used exclusively in any specific applications. Rather, the record indicates that there are overlapping applications. For example, pipe above and below two inches may both be used as line and pressure pipe. The technical definitions for line and pressure pipe provided by ASTM, AISI, and a variety of other sources do not recognize a distinction between pipe over and under two inches.

Likewise, despite the fact that alloy grade steels are associated with enhanced heat and pressure tolerances, there is no evidence that the carbon or alloy content of the subject merchandise can be differentiated in the ultimate use or expectations of the ultimate purchaser of seamless pipe.

3. Channels of Trade

Based on information supplied by the parties, we determine that the vast majority of the subject merchandise is sold through the same channel of distribution in the United States and is triple-stenciled in order to meet the greatest number of applications.

Accordingly, the channels of trade offer no basis for dividing the subject merchandise into multiple classes or kinds based on either the size of the outside diameter or on pipe having a carbon or alloy content.

4. Cost

Based on the evidence on the record, we find that cost differences between the various products do exist. However, the parties varied considerably in the factors which they characterized as most significant in terms of affecting cost. There is no evidence that the size ranges above and below two inches, and the difference between carbon and alloy grade steels, form a break point in cost which would support a finding of separate classes or kinds.

In conclusion, while we recognize that certain differences do exist between the products in the proposed class or kind of merchandise, we find that the similarities significantly outweigh any differences. Therefore, for purposes of the final determination, we will continue to consider the scope as constituting one class or kind of merchandise.

C. Miscellaneous Scope Clarification Issues and Exclusion Requests

The miscellaneous scope issues include: (1) Whether OCTG and unfinished OCTG are excluded from the scope of these investigations; (2) whether pipes produced to non-standard wall thicknesses (commonly referred to as ''tubes'') are covered by the scope; (3) whether certain merchandise (*e.g.*, boiler tubing, mechanical tubing) produced to a specification listed in the scope but used in an application excluded from the scope is covered by the scope; and (4) whether redraw hollows used for cold drawing are excluded from the scope. For a complete discussion of interested party comments and the Department's analysis on these topics, see June 12, 1995, *Additional Scope Clarifications Decision Memorandum* from DAS to AS.

Regarding OCTG, petitioner requested that OCTG and unfinished OCTG be included within the scope of these investigations if used in a standard, line or pressure pipe application. However, OCTG and unfinished OCTG, even when used in a standard, line or pressure pipe application, may come within the scope of certain separate, concurrent investigations. We intend that merchandise from a particular country not be classified simultaneously as subject to both an OCTG order and a seamless pipe order. Thus, to eliminate any confusion, we have revised the scope language above to exclude finished and unfinished OCTG, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in a standard, line or pressure pipe application, and, as with other non-listed specifications, may be subject to end-use certification if there is evidence of substitution.

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[3] The relevant ASTM specifications, as well as product definitions from other independent sources (e.g., American Iron and Steel Institute (AISI)), describe the sizes for standard, line, and pressure pipe, as ranging from ½ inch to 60 inches (depending on application). None of these descriptions suggest a break point at two inches.

[4] The Department has had numerous cases where steel products including carbon and alloy grades were considered to be within the same class or kind. *See, e.g., Preliminary Determination of Sales at Less than Fair Value: Oil Country Tubular Goods from Austria, et al.*, 60 Fed. Reg. 6512 (February 2, 1995); *Final Determination of Sales at Less than Fair Value: Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semi-Finished Products of Special Bar Quality Engineered Steel from Brazil*, 58 Fed. Reg. 31496 (June 3, 1993); *Final Determination of Sales at Less than Fair Value: Forged Steel Crankshafts from the United Kingdom*, 60 Fed. Reg. 22045 (May 9, 1995).

Regarding pipe produced in non-standard wall thicknesses, we determine that these products are clearly within the parameters of the scope of these investigations. For clarification purposes, we note that the physical parameters of the scope include all seamless carbon and alloy steel pipes, of circular cross-section, not more than 4.5 inches in outside diameter, *regardless of wall thickness.* Therefore, the fact that such products may be referred to as tubes by some parties, and may be multiple-stenciled, does not render them outside the scope.

Regarding pipe produced to a covered specification but used in a non-covered application, we determine that these products are within the scope. We agree with the petitioner that the scope of this investigation includes all merchandise produced to the covered specifications and meeting the physical parameters of the scope, regardless of application. The end-use criteria included in the scope is only applicable to products which can be substituted in the applications to which the covered specifications are put *i.e.* standard, line, and pressure applications.

It is apparent that at least one party in this case interpreted the scope incorrectly. Therefore, we have clarified the scope to make it more explicit that all products made to ASTM A–335, ASTM A–106, ASTM A–53 and API 5L are covered, regardless of end use.

With respect to redraw hollows for cold drawing, the scope language excludes such products specifically when used in the production of cold-drawn pipe or tube. We understand that petitioner included this exclusion language expressly and intentionally to ensure that hollows imported into the United States are sold as intermediate products, not as merchandise to be used in a covered application.

Standing

The Argentine, Brazilian, and German respondents have challenged the standing of Gulf States Tube to file the petition with respect to pipe and tube between 2.0 and 4.5 inches in outside diameter, arguing that Gulf States Tube does not produce these products.

Pursuant to section 732(b)(1) of the Act, an interested party as defined in section 771(9)(C) of the Act has standing to file a petition. (*See also* 19 C.F.R. § 353.12(a).) Section 771(9)(C) of the Act defines ''interested party,'' *inter alia,* as a producer of the like product. For the reasons outlined in the ''Scope Issues'' section above, we have determined that the subject merchandise constitutes a single class or kind of merchandise. The International Trade Commission (ITC) has also preliminarily determined that there is a single like product consisting of circular seamless carbon and alloy steel standard, line, and pressure pipe, and tubes not more than 4.5 inches in outside diameter, and including redraw hollows. (*See* USITC Publication 2734, August 1994 at 18). For purposes of determining standing, the Department has determined to accept the ITC's definition of like product, for the reasons set forth in the ITC's preliminary determination. Because Gulf States is a producer of the like product, it has standing to file a petition with respect to the class or kind of merchandise under investigation. Further, as noted in the ''Case History'' section of this notice, on April 27, 1995, Koppel, a U.S. producer of the product size range at issue, filed a request for co-petitioner status, which the Department granted. As a producer of the like product, Koppel also has standing.

The Argentine respondent argues that Koppel's request was filed too late to confer legality on the initiation of these proceedings with regard to the products at issue. Gulf States Tube maintains that the Department has discretion to permit the amendment of a petition for purposes of adding co-petitioners who produce the domestic like product, at such time and upon such circumstances as deemed appropriate by the Department.

The Court of International Trade (CIT) has upheld in very broad terms the Department's ability to allow amendments to petitions. For example, in *Citrosuco Paulista, S.A. v. United States,* 704 F. Supp. 1075 (Ct. Int'l Trade 1988), the Court sustained the Department's granting of requests for co-petitioner status filed by six domestic producers on five different dates during an investigation. The Court held that the addition of the co-petitioners cured any defect in the petition, and that allowing the petition to be amended was within Commerce's discretion:

> [S]ince Commerce has statutory discretion to allow amendment of a dumping petition *at any time,* and since Commerce may self-initiate a dumping petition, any defect in a petition filed by [a domestic party is] cured when domestic producers of the like product [are] added as co-petitioners and Commerce [is] not required to start a new investigation.

Citrosuco, 704 F. Supp. at 1079 (emphasis added). The Court reasoned that if Commerce were to have dismissed the petition for lack of standing, and to have required the co-petitioners to refile at a later date, it ''would have elevated form over substance and fruitlessly delayed the antidumping investigation * * * when Congress clearly intended these cases to proceed expeditiously.'' *Id.* at 1083–84.

Koppel has been an interested party and a participant in these investigations from the outset. The timing of Koppel's request for co-petitioner status and the fact that it made its request in response to Siderca's challenge to Gulf States's Tube's standing does not render its request invalid. *See Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada,* 50 FR 25097 (June 17, 1985). The Department has rejected a request to add a co-petitioner based on the untimeliness of the request only where the Department determined that there was not adequate time for opposing parties to submit comments and for the Department to consider the relevant arguments. *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden,* 52 FR 5794, 5795, 5803 (February 26, 1987). In this investigation, the respondents have had an opportunity to comment on Koppel's request for co-petitioner status, and the Argentine respondent has done so in its case brief. Therefore, we have determined that, because respondents would not be prejudiced or unduly burdened, amendment of the petition to add Koppel as co-petitioner is appropriate.

Period of Investigation

The period of investigation (POI) is January 1, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons, when verified data permitted, on the basis of the criteria defined in Appendix V to the antidumping questionnaire, on file in Room B–099 of the main building of the Department.

Fair Value Comparisons

To determine whether Mannesmann's sales of seamless pipe from MSA to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United

States Price'' and ''Foreign Market Value'' sections of this notice.

In accordance with past practice and consistent with our decision in the preliminary determination, we considered Brazil's economy to be hyperinflationary during the POI. Pursuant to our methodology concerning such an economy, we made contemporaneous sales comparisons based on the month of the U.S. sale.

In accordance with 19 CFR 353.58, we made comparisons at the same level of trade. For those U.S. sales where there were no comparable sales at the same level of trade in the home market, we used home market sales at a different level of trade as the basis of our less than fair value comparisons. Based on our analysis of Mannesmann's questionnaire response, we have accepted its claim that MSA's sales from its factory to unrelated customers and its sales through its related distributor MCSA represent two distinct levels of trade. However, because we could not determine that the difference in level of trade affects price comparability, we made no adjustment to FMV. *See* Comment 5 of the ''Company-specific Issues'' sub-section of the ''Interested Party Comments'' section of this notice.

We also made adjustments for differences-in-merchandise (difmer), where possible, in accordance with 19 CFR 353.57. At verification, we found that respondent's reported variable cost of manufacture data included cost differences not attributable to physical differences in the merchandise. Therefore, we modified the submitted cost data where we had information on the record to eliminate cost differences unrelated to physical differences.

For those products for which difmer cost modification was not possible and those U.S. sales with no comparable home market products and no cost data, we based our analysis, pursuant to section 776(C) of the Act, on the best information available (BIA). As BIA, we used a calculated margin that is sufficiently adverse to fulfill the statutory purpose of the BIA rule. *See* June 12, 1995, *Final Determination Concurrence Memorandum*. *See* also DOC Position to Comment 2 of the ''Company-specific Issues'' sub-section of the ''Interested Party Comments'' section of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination, with the following exceptions:

1. We corrected certain clerical errors found at verification, including: (a) The reported product codes for four products; (b) the reported sales date and end-finish for one transaction; (c) the level of trade reported for one customer; and (d) the reported U.S. duty charges for certain transactions.

2. We revised the reported ocean freight, U.S. brokerage, and U.S. inland freight amounts for certain transactions to reflect actual expenses.

3. We recalculated credit expenses using respondent's revised U.S. shipment dates submitted in the March 9, 1995, response. These dates reflect the approximate date on which the merchandise left the factory.

4. We made a deduction for foreign inland freight charges that were previously not reported in respondent's sales listing.

5. We made a deduction for bank fees paid by MSA for entering into foreign exchange contracts, which had not been reported in respondent's sales listing. *See* Comment 8 of the ''Company-specific Issues'' sub-section of the ''Interested Party Comments'' section of this notice.

Foreign Market Value

As stated in the preliminary determination, we determined that respondent's home market was viable with respect to sales of seamless pipe during the POI to serve as the basis for FMV.

Based on the results of the Department's related party sales test as set forth in Appendix II of the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062 (July 9, 1993), we excluded respondent's related party sales from our analysis, and used only those sales made to unrelated parties.

We calculated FMV according to the methodology described in our preliminary determination with the following exceptions:

1. Where we had verified transaction-specific data on the record, we excluded from our analysis those home market sales that were found to have been returned, and incorrectly included in respondent's sales listing.

2. For both MSA's and MCSA's sales, we revised the reported insurance charges, where appropriate, based on the applicable, verified insurance percentage rates prevailing during the POI.

3. We corrected clerical errors made with respect to the reported interest revenue amounts for two transactions.

4. For MSA's sales, we reduced the reported inland freight charges by the amount by which they exceeded the actual amounts charged by MSA's freight supplier.

5. With respect to MCSA's sales, we corrected the surface treatment codes for those products reported incorrectly as corrosion-resistant.

6. We made no adjustment for inflation value in addition to an adjustment for the reported, verified credit expenses which included an inflation factor. *See* Comment 4 in the ''Company-specific Issues'' sub-section of the ''Interested Party Comments'' section of this notice.

7. Because the reported U.S. and home market packing expenses did not verify, we used BIA for these expenses. As BIA for home market packing expenses, we used the lowest domestic packing expense noted on the record. As BIA for U.S. packing expenses, we used the highest export packing expense noted on the record. *See* Comment 6 in the ''Company-specific Issues'' sub-section of the ''Interested Party Comments'' section of this notice.

8. Where possible, we made difmer adjustments based on the submitted cost data, modified to eliminate cost differences unrelated to physical differences between the merchandise being compared. *See* Comment 2 in the ''Company-specific Issues'' sub-section of the ''Interested Party Comments'' section of this notice.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the daily official exchange rates for the Brazilian currency, as well as the UFIR[5] index, published by the Central Bank of Brazil which were provided by respondent in its February 28, 1995, response and verified by the Department.

Verification

As provided in section 776(b) of the Act, we verified information provided by Mannesmann by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

General Issues

Comment 1

Mannesmann argues that petitioner lacks standing to seek the imposition of antidumping duties on products that it does not produce. According to Mannesmann, petitioner has admitted

[5] The UFIR is an inflationary neutral currency unit.

that it is incapable of manufacturing seamless pipe and tube in dimensions above two inches in outside diameter. Therefore, respondent maintains that petitioner is not an ''interested party'' with respect to this merchandise. Accordingly, the Department should amend the scope of the investigation to limit it only to those dimensions and pipe types that petitioner has a proven ability to manufacture.

Gulf States Tube contends that the antidumping statute neither requires nor permits the Department to limit the scope of the investigation to products that the petitioner itself produces. Gulf States Tube also maintains that respondent's standing claim is untimely and may not be considered by the Department at this stage of the proceeding. Nevertheless, Gulf States Tube asserts that the issue is rendered moot by the request of Koppel Steel Corporation, a domestic producer of subject merchandise in sizes larger than two inches in outside diameter, for co-petitioner status.

DOC Position

We disagree with respondent for the reasons outlined in the ''Standing'' section of this notice.

Comment 2

Mannesmann contends that including an end-use certification requirement in the scope would be both illegal and unworkable. Respondent maintains that petitioner is effectively seeking to circumvent the established legal procedure by arguing for an open-ended scope definition that encompasses products that it does not manufacture and that petitioner has conceded are not causing present injury. In addition, respondent states that it is clear that any end-use certification procedure designed to implement such a scope definition is wholly unworkable because of the manner in which the subject products are sold. That is, in almost all cases the importer of record does not know the ultimate use of the pipe products it sells, and in many instances, neither do its customers. According to respondent, as a practical matter, the effect of an end-use certification requirement would be to ask the impossible of importers. Furthermore, respondent states that the anticircumvention procedures of the antidumping law provide ample remedy to petitioner in cases of order circumvention via product substitution. Respondent emphasizes that absent the detailed inquiry required by anti-circumvention legal provisions, the Department cannot include within the scope of this investigation other merchandise simply because such other products might in theory be utilized for the same purposes as pipe meeting the listed specifications. According to respondent, to do otherwise is contrary to the antidumping law and deprives respondents of their right to a full and fair hearing on any circumvention allegations that might be advanced by petitioner at some later date.

Petitioner argues that there is no factual or legal basis for eliminating end use as a defining element of the scope of the investigation. Furthermore, not only is the feasibility of specific enforcement mechanisms irrelevant to the scope determination, but it is also untrue that any end use certification procedure would be unworkable. According to petitioner, there is no evidence on the record of this investigation that an end-use certification program must require the submission of an end-use certificate by the importer at the time of importation. Rather, petitioner proposes a program whereby the end-use certificate travels with the pipe to the ultimate end-user, who may then send it back up the line of distribution. When final duties are assessed, the Department may assume that any pipe for which no certificates can be produced was used in subject applications. Contrary to Mannesmann's arguments, petitioner maintains that the Department and the U.S. Customs Service are perfectly capable of administering an order that includes end use in its scope definition. In the event that products meeting the physical description of subject merchandise, but which are not certified to one or more of the covered specifications, are being substituted into one of the listed applications, the burden would be on the petitioner, other domestic producers or interested parties to notify Customs and the Department with some objective evidence supporting a reasonable belief that substitution is occurring. Accordingly, it is both unnecessary and inappropriate at this point to engage in debate about the feasibility and desirability of specific end-use certification procedures. According to petitioner, the facts and policy considerations relevant to such a debate are not available on this record, and the selection of a specific enforcement mechanism is beyond the Department's responsibilities in this proceeding.

DOC Position

We disagree with respondent's assertion that including end-use in the scope of the investigation would be unlawful. The Department has interpreted scope language in other cases as including an end-use specification. *See Ipsco Inc.* v. *United States*, 715 F. Supp. 1104 (CIT 1989). *See* ''Scope Issues'' section of this notice for further discussion on end-use.

Comment 3

Mannesmann contends that the carbon and alloy pipe products subject to investigation are distinct classes or kinds of merchandise. Mannesmann asserts that the criteria set out in *Diversified Products* support a division between carbon and alloy products. Specifically, Mannesmann argues that carbon and alloy pipes differ in terms of physical characteristics, uses, customer expectations and cost. With respect to physical characteristics, alloy seamless pipes contain higher grade steel than carbon seamless pipe, and because of their different chemistries, these products have different performance characteristics. With respect to end use which, according to respondent, is inherently tied to physical characteristics, carbon pipe is not as versatile as alloy steel pipe and is not suited for the more sophisticated applications, such as operations in high temperature environments. Respondent asserts that the Department has consistently emphasized the relationship between physical characteristics and end use in past cases (*e.g., Torrington Co.* v. *United States*, 745 F.Supp. 718, 726 (CIT 1990) (*Torrington*)). In addition, respondent states that customer expectations vary depending upon the ability of specific merchandise to perform a given task. With regard to alloy and carbon steel pipe, the ultimate purchaser does not expect these two types of pipe to be interchangeable, and is willing to pay more for alloy steel pipe because it must perform under more adverse conditions than the conditions for which carbon pipe is suited. With respect to cost, respondent states that the cost of alloy pipe is higher than that of carbon pipe because of the more expensive raw materials and production costs incurred in producing alloy pipe. Finally, with respect to channels of trade, respondent states that carbon and alloy pipe move in similar channels, but that this factor is not determinative as to class or kind of merchandise.

Petitioner maintains that the subject merchandise constitutes a single class or kind. With respect to Mannesmann's proposal for a split in class or kind on the basis of material composition, petitioner asserts that the factual evidence does not support such a division. Petitioner states that the application of the criteria employed by the Department in *Diversified Products*

compels the conclusion that there is a single class or kind of merchandise. According to petitioner, the physical characteristics of carbon and alloy pipe represent a continuum of products produced with varying chemical compositions to meet a range of heat, pressure and tensile requirements. According to petitioner, there is simply no bright dividing line between the physical characteristics of the products. Petitioner states that the customer's expectations and use of the product are dictated by the engineering specification required by the intended application. Because the majority of all subject seamless pipe is triple-certified, the pipe may be put to any of the uses that apply to each of the individual specifications to which it is certified. Petitioner points out that the vast majority of seamless pipe is sold through the same channel of trade—distributors. Finally, petitioner adds that, because the majority of seamless pipe is triple-certified, it has identical costs regardless of the customer to whom it is sold.

DOC Position

We agree with petitioner that the subject merchandise constitutes a single class or kind for the reasons outlined in the ''Scope Issues'' section of this notice. Furthermore, respondent's reliance on *Torrington* is misplaced. In *Torrington*, the Court of International Trade found that the Department's division of antifriction bearings into five classes or kinds, based in large part on the physical characteristics of the different types of antifriction bearings, was supported by substantial evidence on the record. In this case, as we stated in our ''Scope Issues'' section, that there is insufficient evidence to show that the difference between carbon and alloy steel rises to a class or kind distinction. *See* ''Scope Issues'' section of this notice for further discussion on class or kind.

Company-Specific Issues

Comment 1

Petitioner argues that BIA must be applied to Mannesmann's responses for the following reasons:

(a) the Department was unable to verify the accuracy or completeness of Mannesmann's sales listings;

(b) MSA's difmer data is erratic and contains serious errors; and

(c) the information for various sales charges and adjustments reported by respondent could not be verified.

Petitioner maintains that Mannesmann's home market sales response must be considered unreliable when viewed in the context of the totality of problems identified at verification and the additional opportunities Mannesmann had prior to verification to provide an accurate response.

With respect to reason (a) above, petitioner states that the Department's verification report confirms that Mannesmann omitted certain sales of subject merchandise from its home market sales listing, often characterizing these omissions as insignificant in terms of the percentage they constitute of total reported sales. Petitioner asserts that since only a portion of Mannesmann's total reported sales will be matched to U.S. sales in dumping margin analysis and the Department's standard hyperinflation methodology requires separate FMV calculations for each month, omissions such as those observed by the Department can have a significant impact on the ultimate margin calculation. According to petitioner, the Department must examine each of the errors and omissions noted in the verification report in the context of its potential impact on monthly sales matches.

In addition to these sales omissions, petitioner notes further that certain sales were reported incorrectly because of errors in accounting for merchandise returns and invoice price corrections. Also, the gross prices for numerous transactions and the surface treatment codes for certain products were reported incorrectly.

With respect to reason (b), petitioner maintains that the cost data submitted by respondent remains erratic and unusable even after the Department's request for its revision in a deficiency letter issued subsequent to the preliminary determination. Reason (b) is discussed in detail under Comment 2 below.

With respect to reason (c), petitioner takes issue with verification findings for certain charges and adjustments, *i.e.*, that MSA's home market inland freight and insurance expenses were overstated, that foreign inland freight charges incurred by MSA on U.S. sales were not reported, that home market and U.S. packing costs were not verified, MPS' reporting of estimated movement charges for certain U.S. transactions, and U.S. shipment date.

Respondent argues that the discrepancies noted by the Department in the verification reports either do not have appreciable effects on antidumping analysis or serve to disadvantage respondent. Therefore, its responses should be used in the Department's final analysis. For example, respondent asserts that a portion of the unreported sales would be irrelevant to product comparisons in the Department's analysis because it did not make any sales of those same products in the United States during the POI.

With respect to the transactions which were omitted inadvertently from MCSA's February 28, 1995, sales listing due to programming errors, respondent points out that these sales were originally reported to the Department in the December 9, 1994, sales listing, and considered in the Department's preliminary analysis. Respondent states that these omitted sales fall into two categories: (1) sales of products which were not matched to U.S. products in the preliminary determination and were irrelevant in the margin calculation; and (2) sales of products which were potential matches for products sold to the United States. However, the sales of potentially matchable products were either not made in the same month as the corresponding U.S. products to which they were matched, or the Department has the necessary data from the December 9 response to utilize the sales for matching purposes. With respect to certain sales of cold-drawn pipe which were never reported to the Department, respondent argues that this is an insignificant portion of total reported home market sales, and that examining these sales within the context of the Department's preliminary determination product concordance indicates that none of the unreported sales should be treated as the most similar match to U.S. sales of cold drawn pipe. With respect to another group of products that were not reported to the Department because of a product selection error made during response preparation, respondent argues that these products are irrelevant to product comparisons on the basis of specification.

Furthermore, respondent notes that any other discrepancies found at verification are minor and/or disadvantage respondent. Such discrepancies include: the incorrect reporting of four U.S. product codes for certain transactions; the overstatement of MSA's home market inland freight and insurance charges; MSA's omission of foreign inland freight charges for U.S. sales; and certain estimated U.S. movement charges which were not updated to reflect actual charges incurred.

DOC Position

We disagree with petitioner that Mannesmann's responses cannot be used for the final determination. While we noted several discrepancies at verification, these discrepancies were neither pervasive nor representative of a

pattern of misrepresentation which would merit the rejection of the questionnaire response in total.

It is true that respondent omitted certain home market sales from its February 28, 1995, sales listing for a variety of reasons, ranging from incorrect product code selection to inadvertent programming errors (*see* MSA/MCSA Verification Report at 49–55). However, we were able to verify the nature and magnitude of these errors, and found that they are not significant with respect to either the percentage of total home market sales reported or potential home market matches. In order to arrive at this conclusion, we conducted a comparative analysis between the characteristics (and weighted-average prices) of the omitted home market products originally reported in Mannesmann's December 9, 1994, sales listing, and those of the reported home market products in respondent's February 28, 1995, sales listings. As a result of this exercise, we found that for some of the omitted sales, there did not exist contemporaneous sales of identical products reported in respondent's February 28, 1995, sales listings. We then compared the product characteristics of the omitted sales to those of the U.S. sales, and found that none of the omitted home market sales would be comparable to the U.S. products sold during the POI on the basis of grade. Regarding those sales of another group of products that were not reported to the Department because of a product selection error, we found that, regardless of the month in which they were sold, these products would not be comparable to those sold to the United States on the basis of specification. Finally, we have determined to apply BIA to respondent's U.S. sales of cold-drawn pipe made during the POI for the reasons outlined in Comments 2 and 9 below.

Furthermore, with respect to those home market sales affected by merchandise returns which were verified not to be usable for margin analysis, we found that the home market sales quantity affected was insignificant in terms of total reported home market sales quantity. Because these sales were incorrectly included in respondent's home market sales listing, we excluded them from our analysis where we could clearly identify the affected individual transactions from data contained in verification exhibits.

In addition, regarding the gross prices of those transactions which were found to be overreported, we included these sales in our analysis, but did not make any adjustments to price. Our decision to make no adjustment is based on the fact that the prices at issue represent an overstatement of actual prices charged and any revision of such prices would not only be burdensome given the number of affected transactions, but would also require the revision of other sales-related data (*e.g.*, taxes) which are calculated based upon price and were not examined specifically at verification within the context of overreported gross prices.

As for the other areas stated by petitioner in which discrepancies were found (*e.g.*, difmer, packing, etc.), we made appropriate adjustments in accordance with verification findings based on information on the record, as discussed in the ''United States Price,'' ''Foreign Market Value'' and ''Interested Party Comments'' sections of this notice.

Comment 2

Petitioner contends that Mannesmann's difmer cost data remains erratic and unusable for the final determination and, therefore, the Department should apply BIA to calculate the margin for any U.S. sale for which there is no contemporaneous identical match in the home market. According to petitioner, Mannesmann's difmers are deficient because they are not based on replacement costs in the month of shipment; rather Mannesmann's costs have been reported on a historical basis. Petitioner points out that the fact that Mannesmann has recorded its historical costs in UFIRs does not transform them into replacement costs, and that this approach has been rejected in previous cases by the Department (*e.g., Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil,* 59 FR 42806, August 19, 1994) (*Silicon Metal from Brazil*). Even though the Department changed its hyperinflationary methodology in 1994 by providing for indexing of costs across different months, petitioner maintains that the costs that are indexed still must be replacement costs during the month of shipment, and must not represent historical costs. Petitioner argues that UFIR indexation is no substitute for the reporting of actual monthly replacement costs.

Petitioner also maintains that the fluctuations in cost are not limited to the materials component of the reported costs; there are also significant variations in the reported labor and variable overhead costs from month to month for the same products, indicating that the data is unreliable. According to petitioner, while the Department verified that the reported cost data was submitted in accordance with the exact methodology used in its normal cost accounting system, the Department did not verify that the system accurately states respondent's costs for purposes of this investigation. Citing *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom* (58 FR 6207, January 27, 1993), petitioner emphasizes that the Department has rejected the use of cost differences unrelated to physical differences for difmer adjustment purposes in past cases.

With respect to petitioner's request for the use of BIA, respondent asserts that petitioner ignores the facts on the record and that the Department was able to trace the reported cost data to source documentation, and tie them to financial statements.

Furthermore, respondent asserts that petitioner's attempt to link the concepts of replacement costs and monetary correction in arguing that MSA's reported costs do not account for changes in replacement costs is confused. According to MSA, a monetary correction is merely an adjustment to financial statements to measure the cost for holding balances in certain accounts during periods of inflation. Such an adjustment has nothing to do with production costs or difmer calculations. Respondent notes that the Department has confirmed this in past cases by treating such monetary corrections as offsets or additions to financing expenses (*e.g., Final Results of Administrative Review: Gray Portland Cement from Mexico,* 58 FR 47253 (1993)).

Respondent asserts that, contrary to petitioner's attempt to confuse the significance of MSA's UFIR-based cost system, this system accounts for the effects of changes in replacement costs. In addition, respondent opposes petitioner's characterization that a UFIR-based system is tantamount to reporting historical costs. According to respondent, the historical method contrasts sharply with the UFIR system, which carries costs forward on a steady currency basis and, in effect, reaches the same result as a replacement cost system. The UFIR-based methodology is applicable for both finished goods and inputs and ensures that MSA's costs reflect market conditions. Because this methodology tracks the inflation rate, material and finished goods are constantly inflated when expressed in Brazilian currency. According to respondent, this result is precisely the intent of the replacement cost accounting system, *i.e.*, to express costs in real terms. Therefore, respondent's UFIR-based system accurately tracks cost on a replacement basis and is not,

as petitioner suggests, on a historical cost basis.

DOC Position

We agree in part with both petitioner and respondent. At verification, we noted that respondent's reported UFIR-based material and fabrication costs varied substantially for the same product produced in different months. We were able to establish that this cost variance was due to a combination of factors which are unrelated to physical differences: (1) the nature of MSA's cost accounting system; (2) the process used to produce the input bar consumed in the production of subject merchandise (whether it was produced using ingot or a continuous caster); and (3) whether the material was purchased (imported) or produced in-house by the respondent.

Contrary to petitioner's contention that replacement costs must be used when indexing costs between different months, for difmer purposes, we consider it appropriate to have cost data submitted in UFIR, as maintained by the company in its ordinary course of business. (*See* Department Policy Bulletin No. 94.5 dated March 25, 1994.) The UFIR is not a methodological creation of the respondent; UFIR-denominated costs must be kept in the ordinary course of business for reporting purposes to the ''Junta Comercial'' (the Brazilian equivalent of the Securities and Exchange Commission). Also, we find that petitioner's cite to *Silicon Metal from Brazil* as case precedence for the Department rejecting submitted UFIR costs is misplaced. In *Silicon Metal from Brazil*, unlike the instant case, there was no UFIR type indexation scheme in effect. Rather, the ''monetary correction'' methodology (*i.e.*, year-end restatement of assets/liabilities) used by respondent was deemed inappropriate.

Furthermore, we disagree with petitioner's contentions that MSA's submitted variable fabrication costs are unreliable and that the differences in fabrication costs cannot be explained by alleged differences in input steel costs. As stated above, we verified that MSA's submitted cost data was extracted directly from its normal cost accounting system which records the actual costs incurred to manufacture each batch of pipe produced. We thus have no reason to believe that MSA's submitted cost data is unreliable in general. Second, we observed at verification that steel bar produced from ingot versus a continuous caster will affect both material and fabrication costs.

However, notwithstanding the fact that respondent's variable costs were reported in accordance with its normal cost accounting system, we agree with petitioner that we must use variable costs for difmer adjustment purposes which are not distortive in margin analysis. For difmer purposes, it is the Department's practice to consider only those cost differences associated with physical differences in the products under comparison. The flaw we found in MSA's reporting methodology was one of not neutralizing the cost differences resulting from different production processes or supply sources for input bar, which is an inherent result of its normal cost accounting system. Therefore, for purposes of the final determination, we have modified respondent's variable costs of manufacture for those products for which we had information on the record to enable us to compute a difmer adjustment exclusive of the cost differences unrelated to physical differences. For the material costs of these products, we computed a POI weighted-average bar cost for all subject merchandise using the same material grade bar. We then determined the product-specific material costs by multiplying product-specific POI average yield rates by the POI weighted average bar cost. For fabrication costs, we had available a breakout of the quantity of continuous casted versus ingot bar used in production for specific products for each month of the POI. From this data, we identified for similar product matches, which months used comparably sourced bar.

However, for certain products we did not have the information concerning the POI monthly quantity of input bar produced via the continuous-casted versus ingot methods. Additionally, we were unable to determine the percentage of such products produced from imported tube versus MSA-produced tube. We note that the vast majority of the U.S. products that are affected by this lack of information on the record are cold-drawn pipes. *See* Comment 9 below. Therefore, for a small percentage of U.S. sales quantity, we were unable to eliminate the fabrication cost differences resulting from the different production processes and/or sources of input bar. For those sales of U.S. products where we did not have reliable fabrication costs, we used a margin based on BIA. As BIA, we used a calculated margin that is sufficiently adverse to fulfill the statutory purpose of the BIA rule (section 776(c) of the Act) and which is indicative of, and bears a rational relationship to, the respondent's sales. *See National Steel* v. *United States*, 870 F.Supp. 1130 (CIT 1994).

Comment 3

Petitioner argues that MSA and MCSA incorrectly reported invoice date as the date of sale for all home market sales. It maintains that the correct date of sale is Mannesmann's internal order date because it is at this time that final agreement on the essential terms of sale, including price and the manner in which it will be adjusted for inflation, is made. Petitioner asserts that the only changes in the essential terms of sale between Mannesmann's internal order and invoice dates are a currency conversion and an inflation adjustment, both of which are performed automatically by computer without negotiation with the customer; and that this was the only variance between order and invoice date noticed by the Department at verification. According to petitioner, the automatic restatement of the price by computer to account for inflation is not a substantive change in the material terms of sale. Petitioner cites *Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France* (52 FR 812, January 9, 1987) (*Brass Sheet and Strip*) to support its position that it is the Department's established practice to use as the date of sale, the date on which basic terms become determinable, without regard to automatic mechanisms that might alter or establish specific terms.

For the final determination, petitioner urges the Department to use the sales listings submitted on December 9, 1994, despite substantial alterations made to them (*i.e.*, in the subsequent sales listings submitted on February 28, 1995). According to petitioner, these listings provide internal order dates and invoice numbers that can easily be matched to the invoice numbers reported in Mannesmann's February 28, 1995, response. For any sales in the February 28, sales listing which cannot be matched to an alleged ''proper'' date of sale using the December 9, listing, petitioner maintains that the Department should apply partial BIA by using the average time lag between order and invoice date for other sales to place the sale in the appropriate month. This method of partial BIA would entail deflating prices for such months because the prices and adjustments in the February 28, response are stated in cruzeiros valued for months later than the actual date of sale claimed by petitioner, so that they are restated in terms of the value of the cruzeiro during the month of sale. Alternatively, if the currency conversion is too burdensome, the Department should apply, as partial BIA to such sales, either the highest

calculated margin for the company or the highest margin alleged in the petition.

Respondent argues that invoice date is the correct date of sale in accordance with the Department's normal methodology. It is also the date mandated by Brazilian law and accounting practices, which do not recognize a sale until the invoice is generated, and the date consistent with MSA and MCSA's recordkeeping system in the ordinary course of trade. Respondent takes issue with petitioner's assertion that the only subsequent changes in the essential terms of sale between MSA's internal order entry and shipment are a currency conversion and an inflation adjustment. Respondent states that not only did the high rate of inflation during the POI preclude any determination of the essential terms of sale (particularly price) until the time of invoicing, but also that there are significant fluctuations in price and quantity that typically occur between the order date and invoice date which the Department confirmed at verification. Citing the *Preliminary Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand* (60 FR 2734, January 11, 1995), respondent asserts that the Department has, under appropriate circumstances in past cases, specifically endorsed invoice date as the date of sale. In addition, respondent states that the purchase order is sometimes not received until after the invoice is generated by MCSA and the order shipped. According to respondent, invoice date is the most consistent and reliable basis for reporting comparable dates of sale in Brazil from both MSA and MCSA.

DOC Position

We agree with respondent and have accepted its reported date of sale. At the verification of both MSA and MCSA, respondent provided source documentation substantiating its reasons for using invoice date as the date of sale. These reasons included not only the effects of inflation between purchase order date and invoice date, but also the fact that Mannesmann's internal order is subject to numerous fluctuations in price and quantity up until the date of invoice. (*See* Verification Report at 11–12 and 47.) Our decision in this instance is consistent with past cases. *See Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil,* 59 FR 8598, February 23, 1994).

We also note that the facts in *Brass Sheet and Strip* are different from those in the instant case. In *Brass Sheet and Strip,* a formal contract between the buyer and seller established a price based upon a publicly quoted metal value source. The parties had agreed upon a time period during which the customer could lock in the publicly quoted rate; no further negotiations were necessary. *In Brass Sheet and Strip,* the price and quantity terms were sufficiently definite and effectively finalized as of the date of the initial contract, and the parties had no further ability to change the price by negotiation. In the instant case, not only are prices subject to fluctuation due to the hyperinflationary adjustment in Brazil, but customers often negotiate a different price or make material changes to quantity between the date of initial order entry and invoice date. While the *Brass Sheet and Strip* case involved long-term, fixed contracts where there was nothing left for the parties to negotiate, the instant case reflects the fact that when a purchase order to schedule production enters into MSA's system, the negotiating continues and a price adjustment often follows at the time of invoicing. With respect to this price adjustment, we could find no evidence in the source documentation examined at verification that, at the time of order, the customer had knowledge of the index (or indices) that would be used by respondent to make the adjustment for inflation, and that the customer therefore knew the exact price to which it had agreed. We also noted evidence of post-order cancellations, indicating that the customer was not bound by the terms set in the order.

We note that our decision in this case to accept the date of invoice as the date of sale is based upon the factual evidence on the record. In general, issues regarding the appropriate date of sale are examined on a case-by-case basis, and our decision in this case should not be interpreted as a general policy preference in future cases.

Comment 4

Consistent with its contention that the appropriate date of sale is the date of respondent's internal order, petitioner maintains that the home market prices and other cruzeiro-denominated data reported by Mannesmann must be restated in terms of the value of the cruzeiro during the month of sale. Similarly, according to petitioner, an inflation factor should not be included in any credit expense adjustment. Petitioner argues that to some extent the inflator in the credit expense adjustment can be expected to offset the inflator in the price. However, since the two inflators are derived differently and serve different purposes, they are seldom, if ever, equal. Whereas the credit expense inflator reflects inflation from the invoice date to the actual date of payment, the price inflator is based on the number of days between the invoice and the expected date of payment. Furthermore, petitioner states that the Department verified that the rates used for the price inflator are not proportional across payment terms. Therefore, while the credit expense inflator should reflect the actual inflation rate, the price inflator may be higher or lower than the true rate depending on the date of actual payment. According to petitioner, the Department can determine the actual gross unit price in terms of cruzeiros during the month of sale by subtracting the reported inflation value from the reported gross unit price (invoice price). In addition, the indexed value of the reported (inflated) gross price should be compared to the price of the internal order, and any excess should be treated as interest revenue attributable to that sale because the price inflator may be higher than the true inflation rate.

Petitioner suggests that the reported inflation value be subtracted from gross price to obtain the price in terms of cruzeiros as valued during the month of shipment, and the resulting values can be converted to cruzeiros as valued on the actual date of sale (*i.e.*, the internal order date) using the exchange rates provided in Mannesmann's response. The indexed value of the reported (inflated) gross price should then be compared to the price of the internal order, and any excess should be treated as interest revenue attributable to that sale.

Respondent maintains that the Department has verified the reported home market credit expenses and the rates for short-term loans available in Brazil during the POI without discrepancy and, therefore, should deduct these credit expenses as reported from FMV. Mannesmann disputes petitioner's allegation that interest revenue affects credit expenses and that, if a customer made a late payment, Mannesmann is not entitled to an adjustment for credit expenses because it would understate home market price. Respondent states that in the few instances when a customer did not pay on the expected date, interest revenue amounts were reported as an upward adjustment to the home market price, as verified by the Department. Also, if a customer did pay late, not only did Mannesmann incur the opportunity cost of not having the customer's money from the invoice date to the expected payment date, but it also suffered a

financial loss from delayed payment during the period between the payment date listed on the invoice and the actual payment date. Therefore, according to Mannesmann, denying an adjustment for credit expenses for the time following payment due date and actual payment is totally illogical.

DOC Position

As discussed above in Comment 3, we have determined that invoice date is the appropriate date of sale in this case. Therefore, we consider moot petitioner's arguments with respect to the restatement of home market prices to reflect the value of the cruzeiro on the order date.

In our preliminary determination, we adjusted FMV for inflation occurring between order and invoice date, which factors in expected payment terms, as well as credit expenses, which include an inflation factor based on actual payment terms. Based on verification findings and our acceptance of respondent's date of sales methodology, we have determined that this adjustment was incorrect because it double-counted the value of inflation. Therefore, for purposes of the final determination, we only made an adjustment to FMV for credit expenses as reported and verified.

Comment 5

Mannesmann argues that the Department should compare U.S. sales by MPS with home market sales made by MSA, including sales to its related party MCSA, and that it provided evidence that MSA's sales to MCSA are arm's-length transactions. However, if the Department does not treat MSA's sales to MCSA as arm's-length transactions, the Department should make a level of trade adjustment to reflect the additional selling expenses (*i.e.*, indirect selling expenses and inventory carrying costs) incurred by MCSA.

Mannesmann asserts that 19 CFR 353.58 requires that a level of trade adjustment be made when FMV and U.S. price are not based on sales at the same commercial level of trade. According to respondent, MSA and MCSA operate at different levels of trade in Brazil. MCSA is a distributor that purchases from MSA and sells to customers from inventory, requiring MCSA to incur considerable inventory and selling expenses. In contrast, both MSA in Brazil and MPS in the United States are not made from inventory, but are manufactured to order. To support its argument, respondent cites *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain* (59 FR 66931, December 28, 1994) (*Stainless Steel Bar*) where the Department granted such an adjustment under allegedly similar factual circumstances.

Petitioner contends that Mannesmann did not provide the evidence it purports to have provided substantiating its claim regarding the arm's-length nature of the transactions between MSA and MCSA. At the preliminary determination, the Department determined that sales to MCSA were not made at arm's length, and based FMV on MSA's and MCSA's sales to unrelated customers. According to petitioner, nothing in the verification report obligates the Department to change that finding. Furthermore, petitioner argues that Mannesmann has not proven its entitlement to a level of trade adjustment. Petitioner asserts that it has not been clearly established that two levels of trade exist. In addition, petitioner states that while Mannesmann argues that differences in selling expenses exist due to inventory costs, it has not proven that a correlation exists between both prices and selling expenses at each level of trade.

According to petitioner, absent additional information concerning differences in the customer bases (*e.g.*, relative size and purchasing power of customers), evidence that price differences correlate to level of trade differences, a level of trade adjustment is not appropriate. However, if the Department nonetheless decides to grant respondent the requested adjustment, it should be based on differences in actual expenses incurred on MCSA's sales; *i.e.*, the adjustment should be made on the reported indirect selling expenses only, exclusive of the reported inventory carrying costs. Petitioner also adds that these selling expenses must be offset by the indirect selling expenses incurred by MSA on U.S. sales because the basic purpose of a level of trade adjustment is to account for differences in the level of trade between U.S. and home market sales.

DOC Position

With regard to the arm's-length nature of related party sales, we agree with petitioner. Based on the results of our related party test (as described in the FMV section of this notice), we found that MSA's sales to MCSA are not at arm's length and, thus, we excluded them from our dumping analysis for purposes of the final determination. This result is consistent with that in our preliminary determination, and since that time, respondent has not provided any new evidence to justify a departure from our normal related party test.

With regard to matching by level of trade, we have accepted respondent's level of trade classification because the record indicates that the alleged difference in level of trade involves different selling activities and expenses. However, with regard to the respondent's claim for a level of trade adjustment, we have determined that an adjustment is not warranted because we are uncertain whether the difference in level of trade affects price comparability.

In analyzing the prices at the two levels of trade, we compared average prices, adjusted for all direct selling expenses, by product and month of sale for the POI. The results of this analysis indicate that prices overlap for a significant number of sales. However, because for each month only a small number of prices by product were available and the monthly inflation rate was high, we have concluded that the data does not provide a reliable indication of the pattern of prices at the two levels of trade. Therefore, we do not have a basis to conclude whether there is or is not a pattern of price differences attributable to level of trade. Accordingly, we have not made a level of trade adjustment.

Comment 6

Petitioner maintains that Mannesmann's packing expenses are unverified and may not be relied upon for purposes of the final determination. Petitioner also maintains that these costs appear to have been based solely on labor and materials without any allocation of overhead costs, and MCSA failed to report any repacking costs associated with its sales. Therefore, petitioner advocates using BIA. As BIA, petitioner requests that the Department either not make any upward adjustment to U.S. price for packing or use the lower of the amounts reported in the U.S. sales listing and the lowest export packing amount reported on the chart on page 41 of the Department's May 11, 1995, Verification Report. Additionally, petitioner proposes that the Department should (1) subtract the lowest of the packing amount reported for the home market sales listing and the lowest domestic packing amount from the verification report chart, and (2) add as an offset to FMV the higher of the amount of the highest U.S. packing amount reported in the sales listing and the highest amount of export packing reported on page 41 of the verification report.

Respondent argues that the Department should apply an average per

unit packing cost based on MSA's simulated cost data provided at verification which tied to the cost data provided in Exhibit 18 of the December 9, 1994, response, as this is the most accurate and reliable data on which to calculate MSA's packing costs. MSA provides a monthly average packing cost calculation for each of the four products sold in each market in Exhibit 2 of its May 19, 1995, case brief. Therefore, the Department should match the resulting average monthly packing data to the sales listing based on the month of shipment for home market sales, as all home market shipments occurred between January and June 1994. For U.S. sales, many shipments of which occurred after the POI, respondent proposes using an average POI packing expense (also provided in Exhibit 2). For sales of products which do not match to one of the four product codes, the average packing expense of all four product codes should be applied.

DOC Position

We agree with petitioner that the reported packing expenses were unverified. At verification, respondent explained that MSA's cost accounting system cannot separately identify packing costs incurred for export and domestic sales. Therefore, in order to derive the monthly per unit packing amounts reported in the U.S. and home market sales listings, MSA conducted packing simulation exercises for four products—three hot-finished and one cold-drawn. That is, they estimated the time it took to pack the products based on actual experience and derived the associated materials and labor costs from their accounting records. However, we could not tie the monthly packing costs resulting from this exercise to the reported monthly per unit packing amounts in respondent's home market and U.S. sales listings. Respondent could not explain the reason for the discrepancy. Therefore, we determine that these costs were not verified. Because the reported costs cannot be used for purposes of our analysis, we used BIA. As BIA for these costs, we subtracted from FMV, the lowest domestic packing amount reported on the record, and added to FMV, the highest export packing amount reported on the record.

Comment 7

Respondent maintains that the Department verified that no galvanized, threaded or coupled products were sold to the United States during the POI. Therefore, MCSA's sales of such products will not be matched to U.S. products and are thereby irrelevant in the Department's margin analysis. With respect to the unreported bevelling costs, respondent states that MSA's cost for producing bevelled pipe was used as a surrogate value for MCSA's sales of bevelled product. Mannesmann states that it is logical that its cost of bevelling would be lower than the bevelling costs charged by a third party. The use of the third party bevelling cost would have resulted in higher home market variable costs which, in turn, would have resulted in a lower difmer to be added to FMV. According to Mannesmann, the use of MSA's bevelling costs as a surrogate for third party expenses incurred by MCSA was therefore conservative and reasonable.

Petitioner contends that Mannesmann often reports significantly different costs in the same month for products that are identical except for end finish, and that these variations do not make sense, particularly because the differences between black plain-end pipe and bevelled-end pipe are insignificant especially in terms of material costs. According to petitioner, there is no consistency in the margins by which reported materials costs differ for otherwise identical products with different end finishes. Neither is there any evidence on the record to suggest a reason for attributing such widely varying costs to virtually identical products simply by reason of end finish. Petitioner notes that, in some instances, Mannesmann has reported identical costs for different end finishes. Petitioner maintains that these facts cast doubt on Mannesmann's entire cost accounting system.

In addition, Mannesmann's principal contention concerning MCSA's third party bevelling costs (*i.e.*, that they are higher than MSA's) constitutes non-record information upon which the Secretary may not rely. MCSA's bevelling costs have never been separately reported on the record and, therefore, could not have been verified. Thus, any bevelling cost attributed to products sold by MCSA must be based on BIA.

DOC Position

We agree with petitioner and respondent in part. We verified that while MCSA failed to report third party galvanization, coupling and threading costs for certain products, no such products were sold to the United States during the POI and, therefore, were not used in product comparisons. Thus, the omission of these costs did not affect any difmer adjustments that were made for similar product comparisons. However, even if such products were used in product comparisons, MCSA's omission of these costs for difmer adjustment purposes would have the effect of underestimating home market costs and thereby overstating the upward difmer adjustment made to FMV. Therefore, we did not make any adjustment for the omitted costs at issue.

With respect to bevelling costs, we note that there were U.S. sales of bevelled pipe during the POI. We also note that for MCSA's sales of bevelled products that were used in product comparisons, MSA's costs of bevelling were included in the reported variable costs of manufacture. This is consistent with the verified product coding methodology used by MCSA. That is, for those products that were further processed by third parties prior to sale, MCSA reported only its own internal product code, and for those products that did not undergo further processing, MCSA reported both MSA's product code and its own product code (*see* May 11, 1995, Verification Report at 8). For the transactions consisting of the bevelled products sold by MCSA which were used in product comparisons, respondent reported both product codes, indicating that the bevelling was performed at MSA's mill. However, we modified these costs for difmer adjustment purposes for the reasons stated in DOC Position to Comment 2 above.

Comment 8

Petitioner alleges that a deduction to U.S. price should be made for the ''bank fees'' incurred by MSA for entering into exchange contracts in order to receive payment from MPS on its shipments to the United States. According to petitioner, such fees are a necessary and direct selling expense relating to U.S. sales. Since similar fees are not incurred for home market sales, the fees must be deducted from USP in order to obtain a proper comparison. Petitioner maintains that Mannesmann's claims that the fees do not affect the U.S. price and that Mannesmann invests a portion of these funds (which respondent has not quantified) is irrelevant to the Department's analysis.

Respondent maintains that this proposal is incorrect for the following reasons: (1) The exchange contract transaction does not impact the U.S. customer, but is solely a mechanism whereby MSA can be paid in local currency for foreign currency sales as required by Brazilian law; and (2) throughout the POI, MSA chose to receive payment in Brazilian currency under the exchange contracts in advance (when the order was booked from the mill), a portion of which it

invested and gained returns which exceeded any fees paid to the bank. According to Mannesmann, the Department should treat the exchange contracts as intercompany transfers of funds between MSA and MPS that have no effect on the payment from the U.S. customer. Respondent claims that any bank fees incurred pre-shipment by MSA are administrative fees that have no bearing on U.S. price.

DOC Position

We disagree with respondent that these fees are intracompany transfers. They are fees paid to third parties in the U.S. sales process which we conclude are included in the ultimate price between MPS and the U.S. customer. These types of fees are normally taken into account in the Department's margin analysis. Therefore, we made an adjustment to U.S. price in the amount of the fee reported in the sample exchange contract provided in Exhibit 10 of the December 9, 1994, response.

Comment 9

Petitioner states that respondent included in its sales listing sales of cold-drawn products finished from imported tube hollows. According to petitioner, such products are not subject merchandise produced in Brazil and should not have been included in the sales listing. Petitioner urges that the Department apply BIA to all sales of cold-drawn pipe in the final determination. In addition, petitioner maintains that none of the difmers provided for cold-drawn products can be used because it is not known how many are affected by the inclusion of imported tube hollows. There is no information on the record that would allow the Department to equate the cost of producing cold-drawn pipe with the cost of finishing cold-drawn tube hollows.

Respondent asserts that the cold-drawn products referred to fall within the scope of the investigation. Mannesmann reported as subject merchandise sales of all products within the scope of the investigation, regardless of whether those products were made from ingots or billets, or in the case of the limited amount of cold-drawn products, purchased hollows. Therefore, unless the petitioner contends that pipe manufactured in Brazil from imported hollows are excluded from the scope of the investigation, Mannesmann asserts that it properly reported all shipments of subject merchandise, including small diameter cold-drawn product manufactured from hollows. Moreover, the Department verified the quantity and price of purchased hollow tubes, and traced the reliability of those material costs reported for cold-drawn products.

DOC Position

We agree with petitioner in part. Our verification findings revealed that respondent had properly reported sales of cold-drawn seamless pipe as subject merchandise in its sales listings (but for certain omissions discussed in Comment 1 above). We also found that respondent used imported tubes in the production of cold-drawn pipe during the POI. However, respondent failed to inform the Department that it used any material input other than in-house produced bar for the production of cold-drawn pipe during the POI, despite the Department's questions concerning the materials used in the production of the subject merchandise in its February 10, 1995, supplemental questionnaire. Consequently, we are unable to make a reliable difmer adjustment for U.S. sales of cold-drawn products because the variable costs reported include costs unassociated with physical differences. Therefore, because we cannot use or modify the reported difmer data for these cold-drawn products as we do not have the information on the record to do so, we have used BIA for the affected sales. *See* also DOC Position to Comment 2 above.

Comment 10

Petitioner contends that approximately two-thirds of the exchange rates reported in MCSA's sales listing, which are necessary for the proper calculation of difmers and should reflect the average monthly rate for the month of shipment, are incorrect. Therefore, the Department should cross-check each reported exchange rate against the actual monthly rate, and make appropriate corrections for the final determination.

Respondent maintains that petitioner's contention is incorrect. According to respondent, the rates at issue were adjusted to ensure that they matched the date of shipment from the factory, and this is the reason for the 22 day adjustment reflected in Mannesmann's response. Mannesmann reported all difmer data and the relevant exchange rates based on the month in which the pipe was shipped from MSA's mill. Because MSA does not maintain inventories of finished pipe, the month of shipment from MSA is also the month in which the pipe was produced. Similarly, in the case of U.S. sales, the Department asked MPS to revise its reported shipment date to reflect the date on which the pipe left the mill. Thus, in all cases involving sales by MSA or MPS, the reported date of shipment reflects the month in which pipe was produced and shipped.

For sales by MCSA, pipe produced by MSA and shipped to MCSA is placed in MCSA's inventory from which it is subsequently resold to MCSA's customers. The reported shipment date for MCSA sales, therefore, does not reflect when the pipe was produced and shipped from MSA. In order to ascertain when a given quantity of pipe was produced and shipped from MSA, MCSA's average days in inventory (as reported in Exhibit 24 of the December 9, 1994, response) was subtracted from the reported shipment date. Therefore, all difmer data and exchange rates for MCSA were based on MCSA's date of shipment minus the average number of days in inventory in order to ensure that the difmer data and exchange rate reflected the date on which the merchandise was produced and shipped from the factory.

DOC Position

We consider this issue raised by petitioner to be moot based on our treatment of difmer costs discussed in Comment 2 above. By using revised UFIR costs for difmer adjustment purposes, we no longer need to convert these costs to U.S. dollars using an average exchange rate. However, we note that we verified the daily CR/UFIR and US$/CR exchange rates reported by respondent in Exhibits 4 and 5 of the February 28, 1995, response against source documentation and found that they were based on official government rates. (*See* May 11, 1995, Verification Report at 37.) Therefore, for purposes of converting home market prices, difmer costs and other adjustments to U.S. dollars on the date of the U.S. sale, we intend to use the verified government exchange rates that were verified. This is consistent with past practice. (*See Silicon Metal from Brazil.*)

Comment 11

Petitioner maintains that Mannesmann has improperly submitted untimely new factual information in its case brief, including: (1) an affidavit by an MPS employee which presents evidence of differences between carbon and alloy pipe within the context of the criteria in *Diversified Products* relevant to the issue of whether the subject merchandise should constitute more than one class or kind; (2) portions of the record of proceedings before the International Trade Commission concerning the issue of whether to continue to include end use as a defining characteristic of the scope; and (3) factual information concerning the

manner in which it calculated MCSA's bevelling costs that had not been submitted to the Department previously. According to petitioner, the Department must strike this information from the record and may not consider it in the final determination.

DOC Position

We disagree with petitioner. With respect to the portions of Mannesmann's case brief referred to above concerning class or kind and end use, we note that the information contained therein further corroborates data previously submitted on the record by respondent (*see* Mannesmann's submissions dated October 21, 1994, October 31, 1994, and March 27, 1994). With respect to bevelling costs, we did not rely on the information referred to by petitioner for purposes of the final determination (*see* DOC Position to Comment 7 above).

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act 19 USC 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of seamless pipe from Brazil, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 27, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated dumping margin, as shown below, for entries of seamless pipe from Brazil that are entered, or withdrawn from warehouse, for consumption from the date of the publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percent
Mannesmann S.A.	125.00
All Others	125.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry, within 45 days of the publication of this notice. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in these investigations of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 USC 1673(d)) and 19 CFR 353.20.

Dated: June 12, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–14937 Filed 6–16–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–820]

Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3853, respectively.

FINAL DETERMINATION: The Department of Commerce (the Department) determines that small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe (seamless pipe) from Germany is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the notice of the preliminary determination published on January 27, 1995, (60 FR 5355), the following events have occurred.

On February 8, 1995, petitioner alleged that the Department made a ministerial error in its preliminary margin calculations. The Department determined on February 17, 1995, that the allegation raised by petitioners was methodological in nature and improperly raised under Section 751(f) of the Act.

In our notice of preliminary determination we stated that we would solicit further information on various scope-related issues, including class or kind of merchandise.

On February 10, 1995, we issued a questionnaire to interested parties to request further information on whether the scope of the investigation constitutes more than one class or kind of merchandise. Responses to this questionnaire were submitted on March 27, 1995.

On February 10, 1995, we issued a supplemental questionnaire to Mannesmannrohren-Werke AG (MRW). MRW submitted its supplemental responses and revised home market and U.S. sales listings on February 28, 1995, and March 6, 1995, respectively.

Pursuant to requests by petitioner and respondent, on February 16, 1995, a notice was published in the **Federal Register** (60 FR 9012) announcing the postponement of the final determination until June 12, 1995.

In March and April 1995, we conducted verification of MRW's questionnaire responses. Our verification reports were issued in May 1995.

On April 27, 1995, Koppel Steel Corporation, a U.S. producer of subject merchandise which appeared as an interested party from the outset of this investigation, requested co-petitioner status.

Respondent and petitioner submitted case briefs on May 16, 1995, and rebuttal briefs on May 23, 1995. No public hearing was requested. On May 23, 1995, we returned portions of MRW's case brief because we determined that it contained new factual information submitted after the deadline specified in 19 CFR 353.31 (a)(i)) for the submission of factual information. On May 24, 1995, MRW refiled its case brief with the new information deleted.

Scope of Investigation

The following scope language reflects certain modifications made for purposes of the final determination, where appropriate, as discussed in the ''Scope Issues'' section below.

The scope of this investigation includes seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe